

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of: )  
 )  
 O U ) OAH No. 12-0930-MDS  
 ) HCS Case No.  
 \_\_\_\_\_ ) Medicaid ID No.

**DECISION**

**I. Introduction**

Mr. U receives Medicaid Personal Care Assistant ("PCA") services. On February 15, 2012 the Division of Public Assistance (Division) performed an assessment to determine Mr. U's continuing need for PCA services.<sup>1</sup> On November 6, 2012 the Division notified Mr. U that his PCA service level was being reduced from 34 hours per week to 27.5 hours per week effective November 17, 2012.<sup>2</sup> Mr. U requested a hearing on November 28, 2012.<sup>3</sup>

Mr. U's hearing was held on December 27, 2012. Mr. U attended the hearing but did not testify. Q U (the recipient's son and power-of-attorney holder) attended the hearing in person, represented his father, and testified on his behalf. G Z of U-Care Services assisted in representing the recipient and also acted as interpreter for Q U. Gerry Johnson attended the hearing and represented the Division. Suzanne Mittlestadt and Olda Levy participated in the hearing by phone and testified on behalf of the Division. The record closed at the end of the hearing.

This decision concludes that the Division's coding of Mr. U's activities of daily living was correct in the areas of body mobility, transfers, locomotion, and personal hygiene, but that Mr. U is eligible for additional PCA services in the areas of dressing/undressing and bathing. Accordingly, the Division's decision is affirmed in part and reversed in part.

**II. Facts**

**A. *Mr. U's Diagnoses and Functional Limitations***

Mr. U is 89 years old<sup>4</sup> and weighs 78 pounds.<sup>5</sup> He lives in a home with two adult relatives and their children.<sup>6</sup> He is Hmong and does not speak English.<sup>7</sup> He has primary diagnoses of

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<sup>1</sup> Ex. E.  
<sup>2</sup> Ex. D1.  
<sup>3</sup> Ex. C.  
<sup>4</sup> Ex. E1.  
<sup>5</sup> Ex. E23.  
<sup>6</sup> Ex. E1.  
<sup>7</sup> Exs. E1, E4.

anemia, arthritis, chronic obstructive pulmonary disease (COPD), and major depression.<sup>8</sup> He has general weakness, a weak grip in both hands, and chronic lower back pain.<sup>9</sup> He can raise his arms overhead and touch his hands behind his back, but he cannot touch his toes or stand up with his hands on his chest.<sup>10</sup> He has an unsteady gait and balance problems when standing.<sup>11</sup> His activities are limited due to a fear of falls.<sup>12</sup> Mr. U's doctor has advised that if he falls there is a good chance that he will break his leg, and that if he breaks his leg, there is a good chance that he will die from complications.<sup>13</sup> He has one eye and his vision is impaired.<sup>14</sup> He also has short-term memory problems.<sup>15</sup> He sometimes gets up at night and wanders around the house by himself.<sup>16</sup>

**B. The Division's Findings From the Assessment**

Mr. U was previously assessed as to eligibility for PCA services in 2007.<sup>17</sup> Based on his 2007 assessment, Mr. U was found to require the following levels of assistance:<sup>18</sup> body mobility - independent, but authorized for 84 minutes due to a mistake by the Division; transfers - extensive one-person physical assist; locomotion - extensive one-person physical assist; dressing - extensive one-person physical assist; personal hygiene - extensive one-person physical assist; and bathing - total dependence.

On February 15, 2012 Mr. U was assessed for PCA eligibility by Olga Levy, R.N. of DSDS.<sup>19</sup> Ms. Levy's assessment is recorded and coded on the Consumer Assessment Tool or "CAT." The codes mentioned below are those assigned by Ms. Levy based on the assessment. Ms. Levy found that Mr. U has the following abilities and limitations with regard to his Activities of Daily Living (ADLs):<sup>20</sup>

Body Mobility / Bed Mobility:<sup>21</sup> Ms. Levy reported that she was told by Q U that his father was able to reposition himself in bed, but required limited physical assistance in getting up from a lying position. Ms. Levy reported that she observed Mr. U sitting in a

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<sup>8</sup> Ex. E3.

<sup>9</sup> Ex. E4.

<sup>10</sup> Ex. E4.

<sup>11</sup> Ex. E23.

<sup>12</sup> Ex. E23.

<sup>13</sup> Q U hearing testimony.

<sup>14</sup> Ex. E22; Q U hearing testimony.

<sup>15</sup> Ex. E4.

<sup>16</sup> Q U hearing testimony.

<sup>17</sup> Exs. D2 - D4.

<sup>18</sup> *Id.*

<sup>19</sup> Ex. E.

<sup>20</sup> Exs. E6 - E12. Ms. Levy testified at hearing that she reviews her findings with the recipient (and his or her representatives and/or caregivers present for the assessment) immediately following the assessment.

<sup>21</sup> Ex. E6.

chair during the assessment and that he repositioned himself in the chair several times without assistance (coded 2/2).

Transfers:<sup>22</sup> Ms. Levy reported that she was told by Q U that his father requires physical assistance for transfers due to general weakness, poor balance, and dizziness. Ms. Levy reported that she observed Mr. U transferring on and off a chair using weight bearing assistance from his PCA (coded 3/2).

Locomotion (walking):<sup>23</sup> Ms. Levy reported that she was told by Q U that his father required limited physical assistance with locomotion inside and outside the home due to general weakness, poor balance, and poor vision. Ms. Levy reported that she observed Mr. U walking in the living room with one-arm assistance from his PCA, and that he used a cane for additional support and balance (coded 2/2).

Dressing:<sup>24</sup> Ms. Levy reported that she was told by Q U that his father required limited physical assistance with dressing his upper and lower body due to general weakness and poor vision, and that he also needed help with buttons and zippers due to weakness in his hands. Ms. Levy did not observe Mr. U dressing or undressing (coded 2/2).

Toileting:<sup>25</sup> Ms. Levy reported that she was told by Q U that his father required physical assistance to transfer on and off the toilet and with hygiene after toilet use. Ms. Levy did not observe Mr. U using the toilet (coded 3/2).

Personal Hygiene:<sup>26</sup> Ms. Levy reported that she was told by Q U that his father could wash and dry his face by himself but required limited physical assistance with shaving, nail care, and applying lotions. Ms. Levy did not observe Mr. U performing any personal hygiene tasks, but noted that he was clean and well groomed at the time of the assessment (coded 2/2).

Bathing:<sup>27</sup> Ms. Levy reported that she was told by Q U that his father requires physical assistance to get in and out of the bath tub and with most of the washing process. Ms. Levy did not observe Mr. U bathing (coded 3/2).

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<sup>22</sup> Ex. E6.

<sup>23</sup> Ex. E7.

<sup>24</sup> Ex. E8.

<sup>25</sup> Ex. E9.

<sup>26</sup> Ex. E10.

<sup>27</sup> Ex. E11.

### III. Discussion

#### A. *The PCA Program - Overview*

The Medicaid program provides personal care assistant (PCA) services to eligible persons; "[t]he purpose of personal care services is to provide to a recipient *physical assistance* with activities of daily living (ADL), *physical assistance* with instrumental activities of daily living (IADL), and other services based on the *physical condition* of the recipient . . . ." <sup>28</sup> [emphasis added]. Accordingly, "[t]he department will not authorize personal care services for a recipient if the assessment shows that the recipient only needs assistance with supervision, cueing, and setup in order to independently perform an ADL or IADL." <sup>29</sup>

#### B. *Alaska's PCA Program - Use of the Consumer Assessment Tool (CAT)*

The Department conducts an assessment for PCA services using the Consumer Assessment Tool or "CAT." <sup>30</sup> The goal of the assessment process is to determine the level of physical assistance that an applicant or recipient requires in order to perform their activities of daily living (ADLs) and instrumental activities of daily living (IADLs). <sup>31</sup> The CAT seeks to make the assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairment. <sup>32</sup>

The ADLs coded or scored by the CAT are body mobility, transfers (non-mechanical), transfers (mechanical), locomotion (in room), locomotion (between levels), locomotion (to access apartment or living quarters), dressing, eating, toilet use, personal hygiene, personal hygiene-shampooing, and bathing. <sup>33</sup> In addition, the CAT codes or scores five other ADL-like activities which are not technically ADLs. These are medication, vital signs / glucose levels, dressings / bandages / oxygen, sterile wound care, and documentation.

The CAT numerical coding system has two components. The first component is the *self-performance code*. These codes rate how capable a person is of performing a particular activity of

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<sup>28</sup> 7 AAC 125.010(a).

<sup>29</sup> 7 AAC 125.020(e). This regulation defines "cueing" as "daily verbal or physical guidance provided to a recipient that serves as a signal to the recipient that the recipient needs to perform an activity;" "setup" as "arranging items for use or getting items ready for use so that the recipient can independently perform an ADL or IADL;" and "supervision" as "observing and giving direction, as needed, so that the recipient can independently perform an ADL or IADL." *Id.*

<sup>30</sup> 7 AAC 125.020(b). The CAT has been adopted into DHSS regulations by reference. *See* 7 AAC 160.900(d)(6).

<sup>31</sup> *See* 7 AAC 125.010(a).

<sup>32</sup> Ex. E.

<sup>33</sup> *See* Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* (accessed online at <http://www.hss.state.ak.us/dsds/pca/documents/PCA%20Service%20Computation.pdf>) (accessed January 8, 2013); *see also* Exs. B29 - B30.

daily living (ADL). The possible codes are **0** (the person is independent and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance<sup>34</sup>); **3** (the person requires extensive assistance<sup>35</sup>); **4** (the person is totally dependent<sup>36</sup>). There are also codes that are not treated as numerical scores for purposes of calculating a service level: **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days).

The second component of the CAT coding system is the *support code*. These codes rate the degree of assistance that a person requires for a particular activity of daily living (ADL). The possible codes are **0** (no setup or physical help required); **1** (only setup help required); **2** (one person physical assist required); **3** (two or more person physical assist required). Again, there are additional codes that do not add to the service level: **5** (cueing required); and **8** (the activity did not occur during the past seven days).

Under the PCA regulations in effect prior to January 26, 2012, the Division would provide a recipient with time for a particular ADL based on *the assessor's perception of how much time would reasonably be required* (up to a maximum level specified by regulation) *to perform the activity at issue*.<sup>37</sup> However, in January 2012 the PCA regulations were amended to implement a new system in which the self-performance code and support code for the specific activity *automatically dictate* the amount of PCA time awarded.<sup>38</sup>

### **C. How Much PCA Time is Mr. U Eligible to Receive in This Case?**

At hearing Mr. U's representatives provided a written statement specifying six particular ADLs as to which they believe Mr. U requires additional PCA time.<sup>39</sup> These areas are body mobility, transfers, locomotion (walking), dressing / undressing, personal hygiene and grooming, and bathing. These activities will be addressed below in the order stated.

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<sup>34</sup> Limited assistance with an ADL "means a recipient, who is highly involved in the activity, receives direct physical help from another individual in the form of guided maneuvering of limbs, including help with weight-bearing when needed." 7 AAC 125.020(a)(1).

<sup>35</sup> Extensive assistance with an ADL "means that the recipient is able to perform part of the activity, but periodically requires direct physical help from another individual for weight-bearing support or full performance of the activity." 7 AAC 125.020(a)(2).

<sup>36</sup> Total dependence for an ADL or an IADL "means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity." 7 AAC 125.020(a)(3).

<sup>37</sup> See former regulations 7 AAC 43.750, 7 AAC 43.751, 7 AAC 43.752, and 7 AAC 43.755.

<sup>38</sup> See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart.

<sup>39</sup> Ex. 1.

1. Body Mobility

For the ADL of body mobility, PCA time is allowed when a person requires physical assistance to reposition himself in a bed or chair, or to perform range of motion and stretching exercises.<sup>40</sup> Notably, a recent regulation change (which became effective before Mr. U's 2012 assessment) allows PCA time to be awarded for repositioning in a bed or chair *only when the applicant/recipient is non-ambulatory*.<sup>41</sup> In this case it was never asserted that Mr. U is non-ambulatory; the dispute regarding locomotion concerns only whether Mr. U requires limited assistance or extensive assistance. Accordingly, as a result of the recent regulation change, Mr. U does not qualify for PCA time for the ADL of body mobility because, even though Mr. U is frail, he can still walk, albeit with assistance.

2. Transfers

For the ADL of transferring, PCA time is allowed when a person requires physical assistance to move between one surface and another (including to or from a bed, chair, or wheelchair), and/or when a person requires physical assistance to move from a lying or sitting position to a standing position.<sup>42</sup>

The Division found that Mr. U requires extensive physical assistance from one person as to transfers (CAT code 3/2). This resulted in him receiving 3.75 minutes per transfer. The only way Mr. U could qualify for additional PCA time in this category would be to demonstrate that he is *totally dependent* on his PCA for transfers (CAT code 4/2 or 4/3). However, Mr. U's representatives did not even assert that he is totally dependent as to transfers; they merely assert that he needs more PCA time for transfers. Further, Q U testified at hearing that his father sometimes gets up at night and wanders around the house by himself.<sup>43</sup> The fact that Mr. U is able to do this by himself without any help demonstrates that he is not fully dependent as to transfers.

Under the *old* PCA regulations and the *old* PCA assessment tool that existed when Mr. U was originally assessed in 2007, the assessor was allowed to award as much time as the assessor thought the applicant/recipient reasonably needed to perform an ADL, up to certain specified limits, *regardless of the person's self-performance code*.<sup>44</sup> Now, however, the amount of PCA time

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<sup>40</sup> 7 AAC 125.030(b)(1).

<sup>41</sup> 7 AAC 125.030(b)(1); Ex. D2; Suzanne Mittlestadt hearing testimony.

<sup>42</sup> 7 AAC 125.030(b)(2).

<sup>43</sup> Q U hearing testimony.

<sup>44</sup> See former regulations 7 AAC 43.750, 7 AAC 43.751, 7 AAC 43.752, and 7 AAC 43.755 ; see also Suzanne Mittlestadt hearing testimony. The former "per unit" maximum time allowances for ADLs were as follows: body mobility - up to 5 minutes; transfers - up to 5 minutes; locomotion - up to 10 minutes; dressing and undressing - up to

awarded is set automatically based on the applicant / recipient's self-performance code.<sup>45</sup> For example, a CAT code of three as to non-mechanical transfers (a transfer that uses hands-on assistance but does not use an assistive device such as a lift) gives a recipient 3.75 minutes of PCA time *regardless of the actual amount of time it takes to perform the transfer*; a CAT code of four as to non-mechanical transfers gives a recipient 5 minutes of PCA time *regardless of the actual amount of time it takes to perform the transfer*.<sup>46</sup>

Mr. U argues that the amount of time that he receives for each transfer (3.75 minutes) is inadequate. However, the evidence shows that the CAT code of 3/2 awarded by the Division is appropriate for transfers. And, because the amount of PCA time awarded is tied directly to the CAT self-performance code under the current regulations, the Division does not have the ability to provide additional PCA time to Mr. U in the absence of a higher self-performance code.<sup>47</sup>

### 3. Locomotion / Walking

For the ADL of locomotion, PCA time is allowed when a person requires assistance with walking (whether with the support of a walker, cane, gait belt, braces, crutches, or manual wheelchair), either between different locations in the recipient's home, or outside the home to keep a medical or dental appointment; PCA time is also allowed when walking and simple exercises have been prescribed by a physician.<sup>48</sup>

The Division found Mr. U to require limited physical assistance as to locomotion (CAT code 2/2). Mr. U's son asserts that his father often requires weight bearing assistance and therefore needs "extensive assistance" with locomotion under the CAT's coding system.

Mr. U's functional ability as to locomotion is difficult to evaluate. On the one hand, the Division's own assessment found that Mr. U has an unsteady gait, has balance problems when standing,<sup>49</sup> has one eye and limited vision<sup>50</sup> (which can obviously limit the ability to walk), and that his activities are limited due to a fear of falls.<sup>51</sup> However, Mr. U's son testified that Mr. U sometimes gets up at night and wanders around the house by himself. The fact that Mr. U is able to

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15 minutes; bathing - 15 to 30 minutes; toilet use - 5 to 12 minutes per use; personal hygiene/grooming - up to 20 minutes per day.

<sup>45</sup> See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* at Exs. B29 - B30.

<sup>46</sup> *Id.*

<sup>47</sup> The only way to change this result would be to amend the regulation; neither the Division nor the administrative law judge have the authority to ignore valid regulations. See *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

<sup>48</sup> 7 AAC 125.030(b)(3).

<sup>49</sup> Ex. E23.

<sup>50</sup> Ex. E22; Q U hearing testimony.

<sup>51</sup> Ex. E23.

walk around by himself at night without any help indicates that it is more likely than not that Mr. U requires only limited assistance from one person to walk. Accordingly, a code of 2/2 is appropriate for the ADL of locomotion.

4. Dressing and Undressing

For the ADL of dressing, PCA time is allowed for the donning, fastening, unfastening, and removal of the recipient's street clothing, support hose, or prosthesis.<sup>52</sup> The Division found Mr. U to require limited assistance with dressing (CAT code 2/2) based on what Ms. Levy said was reported to her by Mr. U's son at the assessment. Mr. U's son asserts, however, (1) that language barriers were present at the time of the assessment; and (2) that his father actually requires extensive assistance with dressing because he cannot see to dress himself, and because (as discussed in the preceding section) he often needs weight bearing support. Q U's testimony at hearing was credible, and it is probable that there was some miscommunication at the time of the assessment given that Q U needed to use an interpreter at hearing. Accordingly, although it is a close question, it is more likely than not that Mr. U requires extensive assistance by one person for dressing. Accordingly, a code of 3/2 is appropriate for the ADL of dressing.

5. Personal Hygiene

For the ADL of personal hygiene, PCA time is allowed for washing and drying the face and hands, nail care, skin care, mouth and teeth care, brushing and combing the hair, shaving when done separately from bathing, and shampooing the hair when done separately from bathing.<sup>53</sup> The Division found Mr. U to require limited physical assistance as to personal hygiene (CAT code 2/2). Mr. U's son asserts that his father requires extensive assistance because he needs a lot of help shaving and washing and drying his face due to the fact that he cannot see very well. However, there was no evidence indicating that Mr. U requires weight bearing assistance while performing personal hygiene, or that he is ever completely dependent on his PCA for performance of personal hygiene tasks. Accordingly, it is more likely than not that Mr. U requires only limited physical assistance with his personal hygiene, and that a code of 2/2 is therefore appropriate.

6. Bathing

For the ADL of bathing, PCA time is allowed for "the taking of a full-body bath, shower, or sponge bath and the required transfers in and out of the bathtub or shower."<sup>54</sup> The Division found Mr. U to require extensive assistance from one person for bathing (CAT code 3/2). Mr. U's son

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<sup>52</sup> 7 AAC 125.030(b)(4).

<sup>53</sup> 7 AAC 125.030(b)(7).

<sup>54</sup> 7 AAC 125.030(b)(8). The definition of bathing contained in the CAT is essentially identical (*see* Ex. E11).



asserts that his father needs help with steadying / support while getting in and out of the tub and while bathing, and that his father also has trouble washing because of poor vision and balance. Mr. U's son seeks a code of 4/2 (total dependence).

The Division's assessment states that Mr. U needs a bath bench and grab bars for bathing, but that the shower or tub does not have these assistive devices.<sup>55</sup> Given that the majority of Mr. U's difficulties with bathing are related to balance problems, Mr. U would most likely require extensive assistance, and possibly only limited assistance, if his shower or tub had a bench and grab bars. However, in the absence of these items, Q U's assertion that his father is fully dependent is credible because of his father's balance problems. It would be impossible for an individual to wash himself if his arms and hands are occupied holding on to the PCA and/or the shower walls in an effort not to fall. Accordingly, it is more likely than not that, without a bath bench or grab bars, Mr. U is fully dependent as to bathing. A code of 4/2 is therefore appropriate.

#### **IV. Conclusion**

The Division's scoring of Mr. U's activities of daily living was correct in the areas of body mobility, transfers, locomotion, and personal hygiene. However, as demonstrated above, Mr. U's need for assistance should be coded at a higher level than reflected on the CAT in the activities of dressing/undressing, and bathing. This entitles him to receive additional PCA time in those activities. Accordingly, the Division must issue a new PCA Service Level Authorization Letter, consistent with this decision, within 30 days of the date that this decision becomes final. Mr. U has the right to request a new hearing should he assert that the new PCA Service Level is inconsistent with this decision.<sup>56</sup>

DATED this 24th day of January, 2013.

*Signed* \_\_\_\_\_  
Jay Durych  
Administrative Law Judge

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<sup>55</sup> Ex. E27.

<sup>56</sup> This decision does not calculate the hours per week of PCA services which Mr. U is eligible to receive. If Mr. U disagrees with the Division's calculation of the specific number of hours of PCA services for which he is eligible, he may request a new hearing on that issue.

## Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 7<sup>th</sup> day of February, 2013.

By: *Signed*  
Name: Jay D. Durych  
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]